

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Spill Prevention and Control
(Title 33, Part IX, Subpart 1, Chapter 9) (WQ079)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, Title 33, Part IX, Subpart 1, Chapter 9 (WQ079).

This proposed rule change will increase the minimum container volume for applicability of the spill prevention provisions from 660 gallons to 1320 gallons, and will establish a de minimus container size for aggregate container applicability that excludes containers smaller than 55 gallons of oil from consideration. It will also increase the interval between operators' required reviews of their spill prevention plans from three years to five years.

There are also minor corrections of grammar and updates of acronym changes in the Rule. Example: LWPDES to LPDES. This proposed change will make this portion of our rules similar to the federal regulations. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on May 26, 2010, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Donald Trahan at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by (WQ079). Such comments must be received no later than June 2, 2010, at 4:30 p.m., and should be sent to Donald Trahan, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3398 or by e-mail to donald.trahan@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ079. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

Title 33
ENVIRONMENTAL QUALITY

Part IX. Water Quality
Subpart 1. Water Pollution Control

Chapter 9. Spill Prevention and Control

§901. Purpose and Scope

A. This Chapter establishes requirements for contingency planning and implementation of operating procedures and best management practices to prevent and control the discharge of pollutants resulting from spill events. For the purpose of this Chapter, *spill event* means the accidental or unauthorized leaking or releasing of a substance from its intended container or conveyance structure that has the potential to be discharged or results in a discharge to the waters of the state. Discharges resulting from circumstances identified, reviewed, and made part of the public record with respect to a valid ~~LWDPSLPDES~~ permit are not considered spill events.

B.-C. ...

D. Definitions. The following definitions apply to terms used in this Chapter. Definitions of other terms and meanings of abbreviations are set forth in LAC 33:IX.105 and 107.

Oil—any kind or form of oil, including but not limited to: fats, oils, or greases from animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and other oils and greases including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, and oil mixed with waste other than dredged spoil.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of the Secretary, Legal Affairs Division, LR 36:

§903. Applicability

A. The provisions of this Chapter apply to:

1. ~~oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;~~
2. all substances listed in LAC 33:I.3931 of the Notification Regulations and Procedures For Unauthorized Discharges, ~~(Louisiana Department of Environmental Quality; effective November 1985)~~ other than *oil* as defined in LAC 33:IX.901.A, that are in liquid form at temperatures ranging between ~~0-35°C~~ 0° and 35°C and pressures at or near 760 mm Hg; and
2. *oil* as defined in LAC 33:IX.901.D; and

3. any other substance that the administrative authority declares, reserves the right to declare the provisions of this Chapter to be applicable to other substances as circumstances warrant in light of the circumstances presented, offers sufficient danger of pollution of the waters of the state to justify application of the provisions of this Chapter.

~~B.~~ The Mminimum aboveground storage capacity at which ~~this Chapter Paragraph A.1 of this Section~~ applies is 1,320 U.S. gallons for two or more individual containers in aggregate within a common storage area, or 660 U.S. gallons for an individual container.

~~C.~~ The minimum aggregate aboveground storage capacity at which Paragraph A.2 of this Section applies is 1,320 U.S. gallons. For the purposes of this aggregate quantity determination, only containers with a capacity of 55 U.S. gallons or greater are counted.

~~E.D.~~ The provisions of this Chapter apply also to any equipment or structures utilized for the conveyance or transfer (loading/unloading) of applicable substances to/from transportation vehicles or vessels to/from facility storage, processing, or disposal areas. For the purposes of this Chapter, the term facility includes those of fixed location when in operation, and that are land based or situated upon or within wetlands and/or surface waters of the state. The requirements of this Chapter shall not apply to off-site transmission pipelines.

~~D.E.~~ The storage and conveyance applicability of this Chapter includes, but is not limited to, all substances meeting the applicability criteria outlined in Subsection LAC 33:IX.903-A of this Section, whether handled as raw materials, products, process intermediaries, byproducts, wastes, process catalysts, lubricants, or fuels.

~~E.F.~~ The provisions of this Chapter shall not apply in those cases where applicable substances are stored within process equipment or conveyance structures located in process areas, provided that the drainage from these areas ~~from which~~ is routed via an LWDPS/LPDES treatment train to a permitted LWDPS-LPDES outfall.

~~E.G.~~ The provisions of this Chapter do not require the preparation of a plan for storage or conveyance of substances in solid form except in instances or at facilities where there exists the potential for solid substances to be spilled, released or discharged either directly to waters of the state or to a flowing drainage conveyance that would immediately transport spilled solid substances to waters of the state. In such cases the requirements for preparation of a plan may apply to solid substances for which there is reasonable evidence or cause to believe that an appreciable degradation of water quality would result from a spill or release due to the nature and/or quantity of the solid substances handled. Even if it has been determined that the preparation of a plan is not required for the storage or conveyance of solid substances at a given facility, it is incumbent upon the operator of that facility to avoid potential contamination to the waters of the state.

~~G.H.~~ Upon notification to the owner/operator of a facility and demonstration of reasonable cause, the administrative authority may require the preparation of a plan for substances not expressly covered by the applicability requirements of this Chapter.

~~H.I.~~ The requirements of this Chapter are intended to complement existing laws, rules, regulations and standards pertaining to the prevention of water pollution. Compliance with this Chapter does not relieve the operator of a facility from compliance with other federal, state or local laws and regulations. Spill Prevention Control and Countermeasure (SPCC) Plans prepared pursuant to 40 CFR Part 112, or manuals prepared relative to any other state or federal

requirement₂ will be acceptable for inclusion in the plan required by this Chapter. A complete plan, however, shall address all applicable substances.

~~I.J.~~ Underground Storage Containers—Reserved

~~I.K.~~ Drum and Barrel Storage—Reserved

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of the Secretary, Legal Affairs Division, LR 36:

§905. Requirements for Preparation and Implementation of Plans

A.-E. ...

F. Periodic Review of Plans. Operators of facilities shall review the plan every ~~three~~five years and shall amend the plan within 90 days of the review to include more effective prevention and control technology if such technology will significantly reduce the likelihood of a spill event and if such technology has been field proven at the time of the review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2545 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2507 (October 2005), LR 33:2163 (October 2007), LR 36:

§907. Guidelines for the Preparation and Implementation of a Plan

A. The plan shall be prepared in accordance with sound engineering practices. If the plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, these items shall be discussed, and the details of installation and operational start-up shall be explained individually. The department recognizes that the designs of major facilities differ and that in certain cases the appropriate methods for spill prevention and control must be site-specific. While the guidelines presented herein suggest the use of specific methodologies for this purpose, alternate methods may be employed if it can be demonstrated to the satisfaction of the department that the alternate methods will adequately prevent and control spills, and that they are reasonably equivalent to the suggested methods. A complete plan shall follow the sequence outlined in LAC 33:IX.903.B-~~EF~~.

B-H.5.b. ...

I. Personnel training and spill prevention procedures should be employed, and brief discussions of the following should be included in the plan.

1. Operators are responsible for properly instructing the appropriate personnel in the operation and maintenance of equipment to prevent or contain spills of substances that are subject to this Chapter's provisions, and all applicable spill control rules and

regulations associated with substances present on the facility site that are subject to this Chapter's provisions.

I.2.-K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2545 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 36:

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

LOG #: WQ079

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Office: Office of Environmental Compliance
Rule
Title: Spill Prevention and Control
LAC 33:IX:901,903,905,907
Date Rule
Takes Effect: Upon Promulgation

SUMMARY
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no anticipated costs or savings to state or local government units as a result of the rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No effect on revenue collections of state or local governmental units is anticipated from the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

A minimal economic benefit will be experienced by facility owners and operators because of the larger volume allowance in container storage areas, and for the increase in time period for the required review of the prevention and implementation plan allowed for both container storage and aboveground storage tank areas.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No significant effect on competition or employment from this proposed rule is anticipated.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed rule change will increase the minimum container volume for applicability of the spill prevention provisions from 660 gallons to 1320 gallons, and will establish a *de minimus* container size for aggregate container applicability that excludes containers smaller than 55 gallons of oil from consideration. It will also increase the interval between operators' required reviews of their spill prevention plans from three years to five years.

There are also minor corrections of grammar and updates of acronym changes in the rule.
Example: LWPDES to LPDES.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

This proposed change will make this portion of our rules similar to the federal regulations.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

The proposed rule change will not result in any increase in the expenditure of funds.

(2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) ____ Yes. If yes, attach documentation.

(b) ____ No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY09-10	FY10-11	FY11-12
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSES	-0-	-0-	-0-
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR	-0-	-0-	-0-
POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The question is not applicable.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY09-10	FY10-11	FY11-12
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
OTHER (Specify)	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The department has sufficient funds to implement the proposed action.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There is no anticipated impact on local governmental units, including adjustments in workload and paperwork requirements.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

- A. What increase (decrease) in revenues can be anticipated from the proposed action?

No increase or decrease in revenues is anticipated from the proposed action.

REVENUE INCREASE/DECREASE	FY09-10	FY10-11	FY11-12
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
RESTRICTED FUNDS*	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
LOCAL FUNDS	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

*Specify the particular fund being impacted.

- B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

This question is not applicable.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

No costs and/or economic benefits to directly affected persons or non-governmental groups are anticipated.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

There is no anticipated impact on receipts and/or income.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

No significant effect on competition or employment from this proposed rule is anticipated.